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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LIN OUYANG,

Plaintiff and Appellant,

v.

ACHEM INDUSTRY AMERICA, INC.,

Defendant and Respondent.

B267217, B268195, B269209, B270026, B271357

(Los Angeles County Super. Ct. No. BC468795)

APPEAL from orders of the Superior Court of Los Angeles County, Michael B. Harwin and Mark A. Borenstein, Judges. Affirmed.

Lin Ouyang, in pro per., for Plaintiff and Appellant.

Law Offices of Ray Hsu, Ray Hsu and Minh Phan, for Defendant and Respondent.

In the underlying action, appellant Lin Ouyang asserted claims for violations of the Labor Code and other claims against Achem Industry America, Inc. (Achem), her former employer. After a jury returned verdicts in favor of Achem and against Ouyang on her claims, the trial court issued an award of expert witness fees to Achem, and ordered Ouyang to permit Achem to conduct a forensic examination of her computer and electronic devices. In these consolidated appeals, Ouyang challenges postjudgment orders relating to the fee award and the forensic examination. In view of a prior order of the Administrative Presiding Justice of the Second Appellate District, which dismissed her appeals from certain nonappealable orders, we limit our inquiry to her remaining appeals. We conclude that some of those appeals must also be dismissed because they are taken from nonappealable orders, and that she has established no error in the other appeals. We therefore dismiss the appeals from the nonappealable orders and affirm the orders properly subject to our review.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

We begin by summarizing the proceedings relating to the award of expert witness fees, the order permitting forensic examination of Ouyang's computer, and the pertinent appeals.

A. *Fee Award and Forensic Examination Order*

In August 2011, Ouyang initiated the underlying action against Achem (Los Angeles County Superior Court Case No. BC468795). She asserted claims under the Labor Code for nonpayment of overtime, rest break violations, and retaliation, as well as claims for intentional misrepresentation, intentional infliction of emotional distress, and retaliation in violation of public policy. In 2012, Ouyang began representing herself in the action.

In October 2014, after a jury returned verdicts in favor of Achem and against Ouyang on her claims, Achem filed a motion to compel a forensic examination of Ouyang's personal computer and other data storage devices

(Code. Civ. Proc., § 2031.310),[1] contending that she admitted possessing Achem's documents. Achem also sought an award of expert witness fees on the ground that Ouyang had refused to accept a settlement offer pursuant to section 998.

In January 2015, Judge Michael Harwin denied Ouyang's motions for judgment notwithstanding the verdict and a new trial, as well as her motion to stay the assessment of costs and to strike costs. Judge Harwin awarded costs to Achem, including $26,058.30 in expert witness fees.

On February 2, 2015, Judge Harwin entered a judgment in accordance with the jury's verdicts. The judgment awarded Achem costs and disbursements totaling $63,180.84. Ouyang appealed from the judgment and the posttrial orders, including the expert witness fee award (B261929). That appeal was later consolidated with the instant appeals for purposes of oral argument only. In a decision filed contemporaneously with this opinion, we affirmed the judgment and related posttrial orders in their entirety.

On March 30, 2015, Judge Harwin granted Achem's motion to compel a forensic examination of Ouyang's computer and other data storage devices. Ouyang noticed no appeal from the order, but sought relief by petition for writ of mandate (B263444). On April 20, 2015, this court denied her petition.[2]

B. *First Appeal (B267217)*

In May 2015, a writ of execution was issued against Ouyang for the payment of $63,205.04 in costs to Achem, which included the award for expert witness fees.

In June 2015, Achem filed a motion for an order to show cause why Ouyang should not be held in contempt of court for refusing to comply with the March 2015 order relating to the forensic examination of her data storage devices. Judge Harwin appointed a public defender to represent Ouyang in

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[1] All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

the contempt proceeding, which he set for the morning session on September 30, 2015.

In July 2015, Achem served Ouyang with a court order and a subpoena directing her to appear at a judgment debtor's examination and produce enumerated categories of documents. The examination was set for September 28, 2015.

In early September 2015, Ouyang filed a motion to stay enforcement of the expert witness fee award and vacate the judgment debtor's examination, or in the alternative, to stay the judgment debtor's examination pending resolution of the contempt proceedings. Ouyang argued that because she was indigent, she was entitled to a waiver of the undertaking required for a stay of enforcement of the fee award. Ouyang also requested that the judgment debtor's examination be stayed while the contempt proceedings were pending in order to protect her privilege against self-incrimination and right to counsel. Additionally, Ouyang filed a motion to quash the subpoena for the production of documents at the judgment debtor's examination, and asserted objections regarding the requested documents.

On September 28, 2015, Judge Mark A. Borenstein commenced the judgment debtor's examination. Achem informed Judge Borenstein that its sole purpose in seeking the examination was to determine whether Ouyang had assets sufficient to pay the award of expert witness fees. Judge Borenstein denied Ouyang's motions and overruled her objections to the requested documents, with the exception of a single objection relating to the "date range" of the requested documents. Regarding that objection, Judge Borenstein limited the date range to the period beginning January 1, 2013. After Achem began its examination of Ouyang, Judge Borenstein continued the examination to the afternoon session on September 30, 2015.

On the morning of September 30, 2015, Ouyang appeared before Judge Harwin for the contempt proceeding. After setting a trial on the contempt claim for December 2, 2015, Judge Harwin informed Ouyang, "[Y]ou are to

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[2] We take judicial notice of the records of Ouyang's prior writ proceedings regarding the orders pertinent to the instant appeals. (*People v. Bilbrey* (2018) 25 Cal.App.5th 764, 769, fn. 7; Evid. Code, § 452, subd. (d).)

take no action with regard to that computer between now and then. Nothing is to be destroyed or deleted . . . ." That afternoon, Ouyang made a belated appearance at the judgment debtor's examination, which Judge Borenstein continued to October 7, 2015.

Ouyang filed notices of appeal from unspecified orders issued on September 28 and 30, 2015. Those notices were assigned to a single appeal (B267217), which constitutes the first appeal before us.

C. *Second Appeal (B268195)*

On September 30, 2015, Ouyang filed a statement of disqualification regarding Judge Borenstein (§ 170.3, subd. (c)(3)). Her statement contended Judge Borenstein had a personal prejudice toward her, pointing to his rulings on her motions and objections to the documents Achem had requested.

On October 5, 2015, Judge Borenstein struck the statement of disqualification (§ 170.4, subd. (b)), stating that Ouyang's sole remedy for a potentially erroneous ruling was review by writ or appeal, not a motion to disqualify.

On October 7, 2015, Ouyang's judgment debtor examination resumed. After Judge Borenstein denied Ouyang's request to transfer the matter to a different judge, during a break in the examination, she filed a second statement of disqualification regarding Judge Borenstein, which he struck when the examination resumed. (§ 170.3, subd. (c)(3).) Following the completion of Ouyang's examination, Judge Borenstein issued a "turnover" order, and discharged her.[3]

Ouyang noticed an appeal from Judge Borenstein's October 2015 orders and unspecified orders issued on September 30, 2015 (B268195). Ouyang also sought relief from Judge Borenstein's denials of her disqualification requests (B267576), which this court denied.

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[3] A turnover order directs the judgment debtor's interest in property or other assets be applied to the satisfaction of the judgment. (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 547 (*Imperial Bank*).)

D. *Third Appeal (B269209)*

On November 23, 2015, Judge Borenstein entered a written turnover order reflecting his oral rulings on October 7, 2015.

On December 2, 2015, Ouyang appeared for the contempt proceeding. Judge Harwin offered Ouyang an opportunity to comply with the March 2015 order regarding the forensic examination of her data storage devices. When Ouyang declined to do so, Judge Harwin found she had knowingly and willfully refused to comply with the order (§ 1209, subd. (a)(5)). In order to permit Ouyang to seek relief by writ petition, Judge Harwin stayed the imposition of sentence, and reasserted his prior order to Ouyang not to destroy or delete files on her computer. Later that day, Ouyang filed a peremptory challenge to Judge Harwin (§ 170.6), who denied it as untimely. Acting in propria persona, Ouyang contested the propriety of the contempt proceedings and Judge Harwin's December 2 rulings by writ petition (B268985, B269372), which this court denied.[4]

Sentencing in the contempt proceeding was set for January 12, 2016. On that date, Ouyang filed a statement of disqualification regarding Judge Harwin. Her statement contended Judge Harwin had personal knowledge of disputed evidentiary facts relating to the contempt proceeding, citing his findings and rulings at the December 2, 2015 hearing. After continuing the contempt proceeding to the next day, Judge Harwin struck the statement of disqualification, concluding that neither his December 2, 2015 rulings nor Ouyang's opinion of those rulings constituted a cognizable basis for disqualification. Ouyang challenged Judge Harwin's striking of the statement of disqualification by writ petition (B269775), which this court denied.

On January 13, 2016, at the beginning of the contempt proceeding, Judge Harwin asked Ouyang whether she would comply with the March 2015 order. She replied that her computer was at home, and offered Achem a CD-

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[4] During the December 2 hearing, Ouyang's public defender stated that his office would provide no appellate representation to Ouyang.

ROM disk she described as containing the files Achem intended to inspect.[5] She argued that offering the disk to Achem constituted compliance with the March 2015 order. Judge Harwin stated, "The order is to bring your computer," and gave Ouyang another opportunity to comply with the order. When Ouyang asserted that there was no lawful basis for the order, Judge Harwin found her to be in direct contempt of court, ordered that she be placed in custody in jail for five days, and continued the proceeding to the following day.

The next day, Ouyang again refused to comply with the March 2015 order. Judge Harwin required Ouyang to serve the remaining portion of her five-day jail term, and directed her to appear for further proceedings on February 3, 2016.

Ouyang filed notices of appeal from Judge Borenstein's November 23, 2015 turnover order and Judge Harwin's rulings from December 2, 2015 through January 14, 2016. Those notices were assigned to a single appeal (B269209).

E. *Fourth Appeal (B270026)*

On January 19, 2016, Ouyang submitted a motion to vacate Judge Harwin's March 2015 order authorizing a forensic examination of her computer, contending the order was void. Ouyang argued, inter alia, that the trial court lacked subject matter jurisdiction to enter the order, and that the order contravened the privacy rights of third parties, as well as her rights to privacy and freedom from unreasonable searches and seizures.

On February 3, 2016, Ouyang appeared for the contempt proceedings. When Judge Harwin asked Ouyang whether she would comply with the March 2015 order, she stated, "I have not received an order . . . saying that I need to bring [the] computer to this court for inspection." She again offered to give Achem a CD-ROM disk she described as containing the files Achem

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[5] At Ouyang's request, we have included a copy of the CD-ROM in the record. However, as Judge Harwin's orders relating to the contempt proceeding are not appealable (see Discussion, pt.I.A., *post*), the CD-ROM is not pertinent to any issue cognizable in this appeal.

sought. After informing Ouyang that she was potentially subject to an indefinite period of confinement for noncompliance with the March 2015 order (§ 1219, subd.(a)), Judge Harwin set a contempt hearing for March 30, 2016. Later, on February 10, Judge Harwin denied Ouyang's motion to vacate the March 2015 order.

Ouyang noticed an appeal from Judge Harwin's February 2016 orders (B270026).

F. *Fifth Appeal (B271357)*

By ex parte application, Ouyang sought a stay of the contempt proceedings, contending her appeal from the denial of her motion to vacate imposed an automatic stay (§ 916, subd. (a).) In the alternative, she requested a discretionary stay. On March 11, 2016, Judge Harwin denied the ex parte application and continued the contempt proceedings to April 13, 2016. Later, on March 25, Judge Harwin denied as untimely a request by Ouyang for a statement of decision regarding the March 11 ruling, and also denied her request that the matter be transferred to a different court.

On April 6, 2016, Judge Harwin stayed all proceedings regarding Ouyang and Achem "until each of [her] appeals in this matter are completed," and ordered Ouyang not to alter any of Achem's proprietary information that may be stored on her computer or other devices.

Ouyang filed notices of appeal from Judge Harwin's March 2016 rulings and April 6, 2016 ruling, which were assigned to a single appeal (B271357).[6]

DISCUSSION

I.

Ouyang asserts contentions regarding numerous postjudgment orders. As we lack jurisdiction to entertain an appeal from a nonappealable order, we first examine Ouyang's notices to determine which are from appealable

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[6] On November 30, 2016, at Ouyang's request, this court ordered the five appeals described above consolidated for purposes of briefing, oral argument, and decision.

orders, before turning to an evaluation of her cognizable contentions. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126-129 (*Jennings*).)

A. *Governing Principles*

Although subdivision (a)(1) of section 904.1 provides that an order made after an appealable judgment is itself appealable, not all such orders are, in fact, appealable.[7] (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 (*Lakin*).) Generally, "[t]o be appealable, a postjudgment order must satisfy two requirements: (1) the issues raised by the appeal from the order must be different from those arising out of the appeal from the judgment, and (2) the order must affect, enforce, or stay execution of the judgment." (*SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 748.) Under the second requirement, "an essential element" of an appealable postjudgment order is that it "is not preliminary to later proceedings and will not become subject to an appeal after some future judgment." (*Barnes v. Litton Systems, Inc.* (1994) 28 Cal.App.4th 681, 685.)

Some postjudgment orders are reviewable only by extraordinary writ, even though they may satisfy the requirements stated above. Among such orders are those issued in contempt proceedings following a judgment. (See *Ross v. Superior Court of Sacramento County* (1977) 19 Cal.3d 899, 913.) Generally, "an order to show cause regarding an alleged act of contempt may issue in the court that made the order that was violated, commencing a separate action in the ordering court. Upon a finding of contempt, the contemner may be punished with up to five days in jail and a fine. [Citations.] Because of the potential punishment, this type of proceeding is considered quasi-criminal, and the defendant possesses some of the rights of a criminal defendant. [Citations.] The contemner possesses no right of appeal, however, and review of the contempt judgment is by extraordinary writ. [Citations.]" (*People v. Gonzalez* (1996) 12 Cal.4th 804, 816 (*Gonzalez*).)

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[7] Section 904.1 provides in pertinent part: "(a) An appeal, other than in a limited civil case, . . . may be taken from any of the following: [¶] (1) From a judgment, except an interlocutory judgment, . . . [¶] (2) From an order made after a judgment made appealable by paragraph (1)."

The same is true of denials of disqualification motions regarding assigned judges under the statutes authorizing challenges "for cause" (§ 170.1) and peremptory challenges (§ 170.6). (*People v. Hull* (1991) 1 Cal.4th 266, 269-275.) As our Supreme Court has explained, the pertinent statutory scheme provides that a writ of mandate is "the exclusive means of challenging a denial of a motion to disqualify a judge." (*Id*. at p. 275; § 170.3, subd. (d).)

B. *Expert Witness Fee Award and March 2015 Order*

At the outset, we examine the extent to which our review encompasses two key rulings that underlie the postjudgment proceedings that Ouyang targets, namely, Judge Harwin's expert witness fee award and his March 2015 order authorizing a forensic examination of Ouyang's computer. As discussed further below (see pt.I.F., *post*), neither order is subject to our review, albeit for different reasons. Because the fee award is included within the judgment from which Ouyang noticed an appeal (B261929), it is not properly before us. (See *Lakin*, *supra*, 6 Cal.4th at p. 644 [party is ordinarily not permitted two appeals from same ruling].) In contrast, Ouyang noticed no appeal from the March 2015 order; furthermore, as explained below, had she done so, the appeal would have been improper because as a discovery order, the March 2015 order was not appealable.

In requesting the March 2015 order, Achem invoked the discovery statutes, which provide that "for good cause shown," the trial court may permit demands for inspection or copying of documents -- including electronically stored information -- and compel a response to such demands.[8] (§§ 2031.010, 2031.310; see §§ 2031.050, 2031.320.) Achem contended that prior to trial, it repeatedly demanded that Ouyang produce all of Achem's proprietary documents in her possession -- including software and data files --

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[8] Although Ouyang has not included Achem's motion to compel a forensic examination in the appellate records before us, her reply brief discusses the motion and cites the copy of that motion contained in her appeal from the judgment (B261929). We therefore take judicial notice of the motion. (Evid. Code, §452, subd. (d); see *People v. Lockwood* (2013) 214 Cal.App.4th 91, 95, fn. 2.)

but she never did so. Achem further contended that during trial, when Ouyang testified she had downloaded 3,000 Achem files to her home computer, Achem's counsel had asked her to preserve that evidence, and the trial court had ordered her to do so. Achem sought the forensic examination for purposes of future proceedings, arguing it needed the documents in order to defend itself in Ouyang's ongoing litigation.

Under the March 2015 order, Ouyang was required to provide her computer and other data storage devices to Achem in order to permit Achem's expert to make a "forensic image backup" of the devices. The expert was directed to act as an officer of the court. Following the expert's review of the forensic image and copying of enumerated documents and files, the parties were to conduct an inspection of the image and copies before Judge Harwin, who would "resolve any disagreement relating to the copying, inspection, and delivery."

Generally, discovery orders are not appealable (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1432), including postjudgment orders permitting discovery while an appeal is pending from the judgment (*Brown v. Superior Court of Los Angeles County* (1949) 34 Cal.2d 559, 562 (*Brown*); see *Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 216 (*Roden*)). The rationale for the rule is that because such orders are preliminary to a future proceeding -- for example, the initial trial in the action, or retrial following appeal -- they are reviewable by appeal from the judgment in the future proceeding. (*Brown*, *supra*, 34 Cal.2d at p. 562.) However, when that remedy is likely to be inadequate, a party may seek immediate review of discovery orders by petition for extraordinary writ. (*Ibid.*)

Under the rule, the March 2015 order was not appealable, as it was potentially reviewable in connection with a subsequent judgment following retrial, after the resolution of her appeal from the initial judgment (B261929). (*Brown*, *supra*, 34 Cal.2d at p. 562.) However, Ouyang was not denied an avenue for seeking immediate review of the order by way of a writ petition. She pursued that avenue, albeit unsuccessfully (B263444). (See *People v. Panah* (2005) 35 Cal.4th 395, 445.)

C. *First Appeal (B267217)*

Ouyang's notices in the first appeal target Judge Borenstein's September 28 and 30, 2015 orders in the judgment debtor examination and Judge Harwin's September 30, 2015 orders in the contempt proceeding. For the reasons discussed below, we conclude the sole appealable ruling the notices identify is Judge Borenstein's order denying Ouyang's request for a stay of enforcement of the expert witness fee award, which she predicated on her alleged indigency.

We begin with Judge Borenstein's September 28 and 30, 2015 orders. Generally, postjudgment orders to appear at a judgment debtor's examination and to produce documents relevant to the enforcement of a money judgment are not separately appealable when they are preliminary to a final order. (*Rogers v. Wilcox* (1944) 62 Cal.App.2d 978, 979; *Roden*, *supra*, 130 Cal.App.4th at p. 216.) With one exception discussed below, Judge Borenstein's rulings were merely preliminary to the final order in the judgment debtor examination, which concluded in October 2015.[9]

The sole appealable order is Judge Borenstein's September 28, 2015, denial of a waiver of the undertaking necessary to stay enforcement of the fee award pending Ouyang's appeal from the judgment and the fee award. Under subdivision (a) of section 916, with certain exceptions, "the perfecting of an appeal automatically stays proceedings in the trial court both upon the judgment or order appealed from, and upon the matters embraced therein or affected thereby, including enforcement of the judgment or order." (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1427-1428.) The automatic stay, when triggered, precludes judicial enforcement of the judgment or order, as well as some types of nonjudicial action, such as a foreclosure sale. (*Royal Thrift & Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 35-36.) However, because the automatic stay does not apply to an award of expert

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[9] Judge Borenstein's preliminary rulings were his denial of a stay Ouyang requested in order to avert threats she perceived to her privilege against self-incrimination and right to counsel, his denial of her motion to quash the subpoena for the production of documents, his rulings on her objections regarding the requested documents, and his June 30 continuance of the proceeding.

witness fees under section 998, Ouyang was required to post a bond or undertaking in order to effectuate a stay (§ 917.1, subd. (a)(2)), unless Judge Borenstein waived that requirement (§ 995.240). Generally, orders relating to the requirement for a bond or undertaking are appealable. (See *Williams v. Thomas* (1980) 108 Cal.App.3d 81, 84-86 (*Williams*).) Accordingly, Ouyang's appeal from Judge Borenstein's September 28 order denying a waiver of the undertaking is properly before us on appeal.

In contrast, Judge Harwin's September 30, 2015 orders were not appealable, as they were rulings in a contempt proceeding. (*Gonzalez*, *supra*, 12 Cal.4th at p. 816.) As our Supreme Court has explained, a contempt-related order "directing compliance, which expressly contemplates a further order, is intermediate in character," and is reviewable only by a writ petition following the final order in the contempt proceeding. (*Gue v. Dennis* (1946) 28 Cal.2d 616, 617-618.)[10]

D. *Second Appeal (B268195)*

Ouyang's notice of appeal in the second appeal encompasses Judge Borenstein's October 2015 rulings in the judgment debtor examination, and unspecified rulings dated September 30, 2015. All those orders were nonappealable rulings -- that is, interim orders or rulings in contempt or disqualification matters -- with the exception of Judge Borenstein's October 7 turnover order, which constituted the final ruling in the judgment debtor examination (*Imperial Bank*, *supra*, 33 Cal.App.4th at p. 544, fn. 1). The turnover order is thus properly before us.

E. *Third Appeal (B269209)*

Ouyang's notices of appeal in the third appeal designate Judge Harwin's rulings in the contempt proceeding from December 2, 2015 through

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[10] Ouyang suggests that Judge Harwin's September 30, 2015 order that she refrain from modifying her computer files pending further orders -- which he reasserted at subsequent hearings in the contempt proceeding -- constitutes an independently appealable injunction (§ 901.4, subd. (a)(6)). We disagree.

January 14, 2016. On November 16, 2016, former Administrative Presiding Justice (APJ) Roger Boren of the Second Appellate District dismissed Ouyang's appeal from those orders, concluding that they were nonappealable rulings relating to disqualification motions and a contempt proceeding. Ouyang has not asked this court to reconsider APJ Boren's order, and we discern no reason to do so.[11]

F. *Fourth Appeal (B270026)*

Ouyang's notice of appeal in the fourth appeal targets Judge Harwin's February 2016 orders in the contempt proceeding, including his February 10 denial of Ouyang's motion to vacate the March 2015 forensic examination order on the ground that it was void. However, APJ Boren's order also dismissed the fourth appeal, with the exception of Ouyang's appeal from Judge Harwin's February 10 ruling, and reserved for this court the determination whether the February 10 ruling was appealable. As Ouyang has not contested APJ Boren's order, we limit our inquiry to that issue. For the reasons discussed below, we conclude the February 10, 2016 ruling was not appealable because the March 2015 order was not appealable.

Generally, void judgments and orders are ineffective and unenforceable. (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19.) To demonstrate a judgment or order is void, a party may file a motion to vacate the judgment under section 473 in the pertinent action or an independent action in equity. (*Preston v. Wyoming Pacific Oil Co.* (1961) 197 Cal.App.2d 517, 527.) Here, Ouyang chose to attack the March 2015 order by means of a motion under section 473, subdivision (d), which provides in pertinent part: "The court . . . may, on motion of either party

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[11] We recognize the notices also designate Judge Borenstein's November 23, 2015 turnover order. Because the November 23 order expressly states that the October 7 turnover order was effective when issued, the latter is properly regarded as the final order in the judgment debtor examination. Accordingly, to the extent Ouyang's third appeal targets the November 23 order, it is duplicative of her second appeal. For that reason, the November 23 order is not reviewable in the third appeal. (*Lakin*, *supra*, 6 Cal.4th at p. 644.)

after notice to the other party, set aside any void judgment or order." (§ 473, subd. (d).)

We conclude that Judge Harwin's February 10, 2016 denial of Ouyang's section 473 motion was not appealable because, as explained above, the order attacked by the motion, viz., the March 2015 order, was not appealable (see pt.I.B., *ante*). When a section 473 motion attacks a prior order as void, the denial of that motion is potentially appealable on the theory that an order incorrectly denying relief from a void order is also void. (See *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110 (*Tillett*), disapproved on another ground in *County of Los Angeles v. Soto* (1984) 35 Cal.3d 483, 492, fn. 4.) However, under section 473, "it is the general rule that an appeal *may not* be taken from a nonappealable order by the device of moving to vacate the order and appealing from a ruling denying the motion." (*Litvinuk v. Litvinuk* (1945) 27 Cal.2d 38, 43-44, italics added.) That rule applies to denials of section 473 motions challenging a prior judgment or order as void. (*Tillett*, *supra*, 133 Cal.App.3d at pp. 110-111.) Accordingly, because Judge Harwin's March 2015 order was not appealable, neither was the February 10, 2016 order.

Although our affirmance of the judgment following trial (B261929) affords us discretion to treat Ouyang's appeal from the February 10 order as a petition for writ of mandate, we decline to do so. Generally, we exercise that power only in "unusual circumstances," namely, when dismissing the appeal, rather than engaging in immediate writ review, would result in """unnecessarily dilatory and circuitous""" proceedings. (See *Olson v. Cory* (1983) 35 Cal.3d 390, 401.) Those circumstances are not presented here, as Ouyang's contentions regarding the February 10 order rely on grounds similar to those she asserted against the March 2015 order in her unsuccessful writ petition (B263444). For that reason, treating her appeal as a writ would amount to a reconsideration of our prior ruling.[12]

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[12] Even were we to treat Ouyang's appeal as a writ petition, we would reject her contentions. Generally, an order is void or voidable when the trial court lacked jurisdiction or granted unauthorized relief. (*Becker v. S.P.V.*

G. *Fifth Appeal (B271357)*

Ouyang's notices of appeal in the fifth appeal encompass five significant orders by Judge Harwin in the contempt proceeding in March and early April

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Construction Co. (1980) 27 Cal.3d 489, 493; *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 210.) Neither circumstance has been established here.

We reject Ouyang's suggestion that the March 2015 order was voidable because it exceeded the trial court's statutory powers. As discussed further (see pt.II.A., *post*), the automatic stay triggered by her appeal from the judgment (B261929) did not bar the March 2015 order because it concerned no matter "embraced therein or affected" by the judgment (§ 916, subd. (a)). To the extent Ouyang contends that Judge Harwin misapplied the discovery statutes in issuing the March 2015 order, she has forfeited that contention, as she first asserted it in her reply brief.

We further reject Ouyang's contention that the March 2015 order violated her rights to due process and privacy because it was uncertain and failed to safeguard her privacy. During discovery, a party may copy relevant records on the adversary's computer hard drive, provided that the court establishes protections sufficient to protect the adversary's privacy and avoid undue burdens. (See *Playboy Enterprises, Inc. v. Welles* (S.D. Cal. 1999) 60 F.Supp.2d 1050, 1052-1056.) Those requirements were satisfied by the March 2015 order, which permitted Ouyang to present any disputes she wished to raise to Judge Harwin during the inspection, and obliged the expert making the forensic image to act as an officer of the court. The order was not uncertain, as it directed Ouyang to make available "all of the computer [devices] and other electronic devices" of a specified type she had used since December 18, 2002 containing enumerated "electronic data that she obtained from Achem during her employment." Nor did the order contravene Ouyang's right to privacy, as Achem sought recovery of its own files, and the March 2015 order limited intrusion into Ouyang's own information. (See *Willis v. Superior Court* (1980) 112 Cal.App.3d 277, 297-298.) The March 2015 order thus did not violate Ouyang's rights to due process and privacy.

In a supplemental brief, Ouyang contends the March 2015 order contravened the Fourth Amendment of the United States Constitution. She relies on *Riley v. California* (2014) 573 U.S. 373, 387, which held that police officers must generally obtain a warrant in order to examine the data on a cell phone. However, in *Greyhound Corp. v. Superior Court of Merced County* (1961) 56 Cal.2d 355, 394, our Supreme Court ruled that the motion procedure for obtaining discovery orders is an adequate equivalent of a warrant. We abide by that decision.

2016. Those orders were: (1) the March 11 denial of a stay of contempt proceeding predicated on Ouyang's appeal from the February 10 denial of her motion to vacate, (2) the March 25 denial of her request for a statement of decision regarding the March 11 ruling, (3) the March 25 request that the matter be transferred to a different court, (4) the April 6 stay of all proceedings pending the resolution of Ouyang's appeals, and (5) the April 6 order barring Ouyang from altering Achem's information stored on her computer or other devices.[13]

Of these rulings, only items (1) and (2) support independent appeals. (See *Williams*, *supra*, 108 Cal.App.3d at pp. 84-86 [denial of stay pending finality of judgment to be enforced was appealable]; *Lavine v. Hospital of the Good Samaritan* (1985) 169 Cal.App.3d 1019, 1021, 1025 & fn. 1 [denial of request for statement of decision as untimely was appealable].) In contrast, because item (3) appears to reflect only a renewed request that Judge Harwin disqualify himself, it is not appealable. Similarly, item (5) is nonappealable as a ruling in a contempt proceeding.

Item (4) -- the April 6 stay -- fails to support an independent appeal for a different reason, namely, that Ouyang lacks standing to attack the ruling. "[O]nly an 'aggrieved party' has a right to appeal." (*Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 754.) Generally, "'[o]ne is considered . . . "aggrieved" whose rights or interests are injuriously affected by the judgment.' [Citation.] Conversely, '[a] party who is not aggrieved by an order or judgment has no standing to attack it on appeal.' [Citation.]" (*El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 977, italics omitted.) Standing to appeal is jurisdictional. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.)

The record unequivocally establishes that Ouyang was not aggrieved by the April 6 stay, as she repeatedly sought such a stay. Indeed, the third and fifth appeals target Judge Borenstein's and Judge Harwin's *denials* of

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[13] The notices also encompass certain clearly nonappealable orders, namely, minor procedural rulings and an order issuing a settled statement for the February 10 hearing (*Cross v. Tustin* (1951) 37 Cal.2d 821, 825-826).

Ouyang's requests for a stay. Accordingly, her appeal from the April 6 stay order must be dismissed for want of standing.

II.

We turn to a review of Ouyang's contentions cognizable on appeal. As explained above, our examination of her appeals discloses only four appealable orders: (1) Judge Borenstein's September 28, 2015 denial of a waiver of the undertaking necessary to stay enforcement of the expert witness fee award pending Ouyang's appeal from the judgment, which incorporated the fee award; (2) Judge Borenstein's October 7, 2015 turnover order, which was the final ruling in the judgment debtor examination; (3) Judge Harwin's March 11, 2016 denial of a stay pending Ouyang's appeal from the February 10, 2016 denial of her motion to vacate the March 2015 forensic examination order; and (4) Judge Harwin's March 25, 2016 denial of her request for a statement of decision regarding his March 11 ruling. Our jurisdiction is thus limited to contentions targeting the orders enumerated above or interim rulings directly related to those orders. (*Jennings, supra,* 8 Cal.4th at pp. 126-129.)

Our inquiry is further restricted by an established principle of appellate review, namely, that we examine only the contentions that Ouyang has offered in her opening brief supported by legal authority and citations to the record. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 844, fn. 3; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, pp. 769-771.) We therefore confine our discussion to such contentions.

A. *Challenges to Judge Harwin's Rulings*

With a single exception discussed below, the arguments raised in Ouyang's appellate briefs, insofar as they relate to Judge Harwin, do not challenge the merits of the identified appealable orders or related interim orders. Her principal contentions are that Judge Harwin's March 2015 forensic examination order was void, and that his February 2016 denial of her motion to vacate the March 2015 order as void was erroneous. As explained above (see pts. I.B. & I.F, *ante*), neither ruling is reviewable on appeal.

Ouyang also raises several noncognizable challenges to Judge Harwin's conduct during the contempt proceedings. She argues that he violated her constitutional rights, including her rights to due process and counsel, as well as her privilege against self-incrimination; that he engaged in judicial misconduct requiring his disqualification; and that he abused his authority in conducting the contempt proceeding. As explained above, however, as those contentions attack nonappealable contempt rulings, the contentions are not properly before us (see pts. I.C - I.G., *ante*.) In large measure, APJ Boren's order dismissed Ouyang's appeals from the rulings pertinent to the contentions.

Ouyang's sole cognizable contention is that the automatic stay triggered by her appeal from the judgment (B261929) divested Judge Harwin of jurisdiction to issue *any* subsequent orders. That contention is subject to our review, as it encompasses the postjudgment orders by Judge Harwin that we have identified as appealable. However, for the reasons discussed below, the contention fails on its merits.

Because the purpose of the automatic stay rule is "to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided" (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 (*Elsea*)), the rule does not stay collateral proceedings that do not affect the judgment on appeal (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 191 (*Varian*)). Generally, the automatic stay bars only those proceedings that "directly or indirectly . . . seek to 'enforce, vacate or modify [the] appealed judgment or order'" or "substantially interfere with the appellate court's ability to conduct the appeal." (*Varian*, *supra*, 35 Cal.4th at pp. 189,190, quoting *Elsea*, *supra*, at p. 629.)

Here, all of Judge Harwin's rulings in the contempt proceedings flowed from his March 2015 forensic examination order. Because the March 2015 order was intended to preserve evidence potentially relevant to Achem's defense in the litigation between the parties -- including any retrial following the appeal -- it cannot reasonably be regarded as affecting the judgment on appeal. (*San Francisco Gas & Elec. Co. v. Superior Court of San Francisco* (1908) 155 Cal. 30, 33 [notwithstanding automatic stay, during appeal from judgment, trial court had jurisdiction to order postjudgment discovery in

order to preserve evidence for potential retrial following appeal]; *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1172-1173 [automatic stay following appeal from judgment did not bar postjudgment injunction intended to preserve status quo pending appeal].) For similar reasons, Judge Harwin's rulings in the contempt proceeding did not affect the judgment on appeal, as the contempt proceeding was aimed at enforcing the March 2015 order. Accordingly, the automatic stay triggered by Ouyang's appeal from the judgment did not divest Judge Harwin of jurisdiction to issue the March 2015 order and conduct a contempt proceeding predicated on it. In sum, Ouyang has shown no error in any ruling by Judge Harwin subject to our review.

B. *Challenges to Judge Borenstein's Rulings*

Unlike Ouyang's challenges to Judge Harwin's rulings, all her challenges to Judge Borenstein's rulings attack his appealable orders or related interim orders.

1. *Denial of Waiver of Undertaking*

Ouyang contends that Judge Borenstein improperly declined to waive the undertaking needed to stay the judgment debtor examination and other proceedings relating to enforcement of the expert witness fee award. For the reasons discussed below, we conclude her contention fails.

As noted above (see pt.I.C., *ante*), an appeal from a judgment awarding expert witness fees as costs under section 998 does not trigger an automatic stay of proceedings to enforce that award. (§ 917.1, subd. (a)(2); see *Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 802-805 (*Bank of San Pedro*).) In order to secure a stay of a judgment for such costs, the judgment debtor must provide an undertaking in an amount based on the award. (*Gallardo v. Specialty Restaurants Corp.* (2000) 84 Cal.App.4th 463, 466-471.) Nonetheless, section 995.240 permits the trial court to waive the requirement

of an undertaking in any action or proceeding when a party establishes that he or she is indigent.[14]

Generally, under section 995.240, "[t]he party seeking relief from the requirement of posting a bond or undertaking has the burden of proof to show entitlement to such relief. [Citation.] [¶] If adequate evidence supports relief from the requirement of posting a bond or undertaking, the trial court may then exercise its discretion by waiving the requirement of a security. It "does 'not mean, however, that the trial court abus[es] its discretion by declining to do so. An exercise of discretion will be disturbed on appeal only if the court exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice.' [Citation.] A 'weak and incomplete showing of indigency,' for example, is sufficient to support a conclusion that 'the trial court did not act arbitrarily, capriciously, or absurdly in denying [a] motion for relief from the undertaking.' [Citation.].)" (*Williams v. Freedomcard, Inc.* (2004) 123 Cal.App.4th 609, 614, quoting *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434.)

Here, Ouyang submitted a declaration stating that she had been unemployed since January 2011, lacked income, had secured a court fee waiver, and had made several unsuccessful attempts to arrange for an undertaking. Achem opposed her request, arguing the policy considerations underlying section 988 expert witness fee awards "strongly favor[ed] denying [the] motion." At the hearing on the motion, Ouyang acknowledged that she "still ha[d the] ability to pay rent." In denying Ouyang's request for a waiver,

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[14] Section 995.240 provides: "The court may, in its discretion, waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given, if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties, whether personal or admitted surety insurers. In exercising its discretion the court shall take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived."

Judge Borenstein remarked that the considerations identified by Achem weighed against a stay of the judgment debtor examination.

We see no abuse of discretion in that ruling. Section 995.240 authorizes the trial court to "take into consideration all factors it deems relevant, including but not limited to the character of the action or proceeding." In *Bank of San Pedro*, our Supreme Court concluded that expert witness fees awarded for refusing a section 998 settlement offer are "nonroutine" costs, noting that the fees were designed to encourage the proposal and acceptance of reasonable settlement offers. (*Bank of San Pedro*, *supra*, 3 Cal.4th at pp. 803-805.) Furthermore, judgment debtor examinations "serve an important function in our judicial system," as "[t]hey are intended to 'leave no stone unturned in the search for assets which might be used to satisfy the judgment.'" (*Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 172 (*Jogani*), quoting *Troy v. Superior Court* (1986) 186 Cal.App.3d 1006, 1014 (*Troy*).) Because Ouyang admitted having the ability to pay rent, Judge Borenstein could reasonably have concluded that due to the importance of enforcing the fee award, her claim of indigency was insufficient to support a waiver until her financial circumstances were fully disclosed in the judgment debtor examination. Judge Borenstein thus did not err in declining to waive the undertaking needed for a stay of the examination.

2. *Turnover Order*

Ouyang challenges the October 7, 2015 turnover order, contending (1) that her appeal from Judge Borenstein's September 28, 2015 rulings removed his jurisdiction to complete the judgment debtor examination, (2) that the statutory scheme governing the examination is constitutionally defective, (3) that Judge Borenstein violated her privilege against self-incrimination and right to counsel, and (4) that Judge Borenstein was biased against her.

a. *Judgment Debtor Examination*

Because Ouyang's contentions target the judgment debtor examination, we summarize the relevant features of that proceeding. Generally, "[t]he examination process is governed largely by statute. [Citation.] Upon application by a judgment creditor, the superior court issues an order

directing the judgment debtor to appear before the court or a court-appointed referee and provide information to aid in the enforcement of a money judgment. [Citation.] Service of the order creates a lien on the nonexempt personal property of the debtor for one year from the date of the order. [Citation.] . . . The debtor has the right to claim that property is statutorily exempt from enforcement. [Citation.] [¶] The court or referee may conduct the actual examination. [Citation.] . . . [¶] . . . The debtor is generally entitled to assert the same privileges that would be available at trial in refusing to answer questions." (*Jogani*, *supra*, 141 Cal.App.4th at pp. 172-173.) At the conclusion of the examination, the court or referee issues a turnover order directing the judgment debtor to deliver specified assets to the levying officer, for purposes of satisfying the judgment. (*Imperial Bank*, *supra*, 33 Cal.App.4th at pp. 547, 549-550.)

b. *No Lack of Jurisdiction*

We begin with Ouyang's contention that her appeal from Judge Borenstein's September 28, 2015 rulings (B267217) barred further proceedings in the judgment debtor examination. On that date, Judge Borenstein commenced the judgment debtor's examination, and issued several rulings from which Ouyang noticed an appeal, including his denial of a waiver of the undertaking necessary to stay enforcement of the expert witness fee award pending Ouyang's appeal from the judgment. The crux of Ouyang's contention is that her appeal from those rulings triggered an automatic stay of the examination. As explained below, the appeal did not divest Judge Borenstein of jurisdiction to complete the examination.

Because the automatic stay, when it applies, arises only upon a "'duly perfected'" appeal, an appeal from a nonappealable order does not affect the trial court's jurisdiction to proceed. (*Hearn Pacific Corporation v. Second Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117, 146-147, quoting *Sacks v. Superior Court* (1948) 31 Cal.2d 537, 540.) As explained above (see pt.I.C. *ante*), the sole appealable order Judge Borenstein issued on September 28, 2015, was his denial of a waiver of the undertaking necessary to stay enforcement of the expert witness fee award.

Ouyang's appeal from that order triggered no automatic stay because the order was "self-executing." As Witkin explains, "[i]t is a fundamental principle that a stay of enforcement can only operate on a judgment commanding or permitting some act to be done. Where the judgment is effective by itself, without any additional act, it is said to be "'self-executing,' and there is nothing to restrain." (9 Witkin, Cal.Procedure (5th ed. 2008) Appeal, § 276, pp. 330-331.) Our Supreme Court has remarked that "[t]he term 'self-executing' is practically self-defining," as it "obviously denotes a judgment that accomplishes by its mere entry the result sought, and requires no further exercise of the power of the court to accomplish its purpose." (*Feinberg v. One Doe Co.* (1939) 14 Cal.2d 24, 29.) Both judgments and orders may be self-executing. (9 Witkin, *supra*, at § 277, pp. 331-333.)

An instructive discussion of self-executing orders is found in *Boggs v. North American Bond & Mort. Co.* (1936) 6 Cal.2d 523 (*Boggs*). There, pursuant to a power of sale in a deed of trust, a bank elected to sell real property securing a loan after the debtor defaulted on the loan. (*Id.* at p. 524.) Relying on the then-effective statutes governing such sales, the debtor filed a petition for an order postponing the sale, which was denied. (*Ibid.*) After the debtor filed an appeal from the denial, the bank conducted the sale. (*Id.* at p. 525.) Our Supreme Court concluded that the appeal did not stay the sale, stating: "The taking of an appeal from an order dismissing a petition for postponement does not stay the right of the trustee to proceed with the sale. The order of the Superior Court denying a petition for postponement is self-executing. The prosecution of an appeal from an order refusing to grant or dissolving an injunction does not create or revive an injunction pending the appeal." (*Ibid.*).

That rationale also applies here. Judge Borenstein's September 28, 2015 ruling was self-executing, as it merely denied Ouyang a waiver of the undertaking needed to stay enforcement of the fee award, and was thus akin to "an order refusing to grant . . . an injunction" (*Boggs, supra*, 6 Cal.2d at p. 525.) For that reason, Ouyang's appeal from the ruling triggered no stay barring the judgment debtor examination. To conclude otherwise would effectively grant Ouyang the stay she sought simply because she took an appeal from Judge Borenstein's ruling, even though she had not provided an

undertaking. In sum, Ouyang's appeal from Judge Borenstein's September 28, 2015 rulings did not impose an automatic stay of the judgment debtor examination.

c. *No Constitutional Defect in Statutory Scheme*

Ouyang contends the statutory scheme governing judgment debtor examinations denies procedural due process. The focus of her contention is on the provisions exempting certain types of property from the satisfaction of a money judgment (§§ 703.140, 704.010 et seq.). She asserts that the scheme contravenes due process because it fails to require that a judgment debtor be informed of the exemptions before the issuance of a turnover order, and does not adequately specify how the judgment debtor may claim an exemption after the order. We disagree.

In *Imperial Bank*, the appellate court rejected similar contentions. (*Imperial Bank, supra*, 33 Cal.App.4th at pp. 553-555.) As the court observed, the statutory scheme mandates that after the turnover order issues and the relevant property is presented to the levying officer, a judgment debtor who is a "natural person" must receive a list of the exemptions and be afforded the opportunity to recover exempt property through a specified motion procedure. (*Id*. at p. 554.) In view of those provisions, the court concluded that the statutory scheme adequately "safeguards the judgment debtor's procedural due process rights." (*Ibid*.) We find *Imperial Bank* persuasive, and thus reject Ouyang's contention.

d. *No Violations of Privilege Against Self-Incrimination or Right to Counsel*

Ouyang contends Judge Borenstein, in conducting the judgment debtor examination, contravened certain rights guaranteed her under the United States and California Constitutions, namely, her privilege against self-incrimination and her right to counsel. She argues that because the examination occurred while the contempt proceeding was pending, Judge Borenstein erred in overruling her assertions of the privilege and denying her request for a stay of the examination until the contempt proceedings were complete; she also argues that she was entitled to court-appointed counsel. As explained below, her contentions fail.

i. *Governing Principles*

Although Ouyang's judgment debtor examination and the contempt proceeding in which she participated were civil in nature, they differed in material ways. A judgment debtor examination "is intended to be summary and factual. It affords the widest scope for inquiry concerning the property and business affairs of the judgment debtor." (*Coleman v. Galvin* (1947) 78 Cal.App.2d 313, 318.) Furthermore, examinations often take place informally. (*Jogani*, *supra*, 141 Cal.App.4th at p. 173.) "In most cases, . . . the court simply administers an oath to the examinee, explains the nature of the proceeding, sends the parties out of the courtroom, and permits the judgment creditor's attorney to conduct the exam; the parties may return to the courtroom if a dispute arises about the appropriateness of a question or answer. [Citations.]" (*Ibid.*)

In contrast, a civil contempt proceeding, though "'not strictly [a] criminal action[]," is a special proceeding "in which the contempt must be proven beyond a reasonable doubt" (*Quezada v. Superior Court of Los Angeles County* (1959) 171 Cal.App.2d 528, 529; see *id.* at pp. 529-531), and in which the party charged is entitled to many of the constitutional rights applicable in a criminal action (*Gonzalez*, *supra*, 12 Cal.4th at p. 816). Thus, in suitable circumstances, indigents charged with contempt may be entitled to a court-appointed attorney, as they face a potential deprivation of their physical liberty. (*County of Santa Clara v. Superior Court* (1992) 2 Cal.App.4th 1686, 1693-1694 (*County of Santa Clara*).)

Notwithstanding the wide scope of inquiry permitted within a judgment debtor examination, the debtor may invoke the privilege against self-incrimination, subject to certain restrictions. (*Troy*, *supra,* 186 Cal.App.3d at pp. 1010-1011.) Generally, "the privilege may not be asserted by merely declaring that an answer will incriminate [citation]; it must be 'evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.' [Citation.] [¶] It is not enough that the witness fears incrimination from answering the questions; the fear must be *reasonable* in light of the witness's

specific circumstances, the content of the questions, and the setting in which the questions are asked. [Citation.]" (*Ibid*.)

Because "the privilege protects only against 'real dangers,' and not 'remote and speculative possibilities'" the trial court is authorized to determine whether any danger exists. (*Troy*, *supra*, 186 Cal.App.3d at p. 1011.) "If the court, in the exercise of its discretion, determines that no threat of self-incrimination is evident, then the burden of showing the danger of self-incrimination shifts to the individual asserting the privilege." (*Ibid*.)

ii. *Underlying Proceedings*

Prior to the judgment debtor examination, Ouyang contended that conducting the examination while the contempt proceeding was pending threatened her with self-incrimination. She asked Judge Borenstein to stay the examination and appoint an attorney for her.

When the examination commenced, Achem told Judge Borenstein that the contempt proceeding arose from Ouyang's refusal to comply with an order to permit a forensic examination of her computer hard drive and other electronic devices. Achem argued that Ouyang's noncompliance with that order was irrelevant to Achem's goal in the examination, namely, acquiring information regarding her ability to pay rent and other living expenses, and her assets such as bonds and real estate. Judge Borenstein overruled Ouyang's objections to the examination -- including her "general" invocation of the privilege -- and declined to appoint an attorney for her, but stated that he would consider her assertions of the privilege "on a question by question basis." He then directed the parties to conduct the examination outside the courtroom.

After Ouyang invoked the privilege with respect to Achem's initial questions regarding income, which concerned how she paid her rent, the parties returned to the courtroom. In response to Judge Borenstein's inquiry regarding how Ouyang's rent payments implicated the contempt proceeding, she replied that the latter required her to turn over "personal properties," including her phones and laptop. When Achem argued that the contempt proceeding targeted only Ouyang's computer, Judge Borenstein asked whether Ouyang owned a phone. She asserted the privilege regarding that

question, and Judge Borenstein did not order her to answer it. He concluded that the contempt proceeding focused solely on devices with a hard drive, and directed Ouyang to answer questions regarding her rent.

In the course of the examination, Ouyang invoked the privilege many times when Achem requested information regarding her income and assets. Judge Borenstein overruled her objections, *except* those directed at questions that potentially sought information regarding the existence of electronic devices with hard drives. After the examination was completed, Judge Borenstein ordered Ouyang to deliver to the Los Angeles County Sheriff the title to her car, documents establishing her ownership of certain stock, and all cash in excess of $500.

iii. *Analysis*

We see no error in Judge Borenstein's orders. In view of his carefully considered rulings regarding Ouyang's privilege against self-incrimination, the examination posed no "real danger[]" of self-incrimination. (*Troy, supra*, 186 Cal.App.3d at p. 1011.) Judge Borenstein thus properly denied her request for a stay of the examination. For the same reason, he also properly denied Ouyang's request for counsel, as the examination as conducted created no real prospect that Ouyang might lose her liberty by answering the questions that she was directed to answer. (*County of Santa Clara*, *supra*, 2 Cal.App.4th at p. 1693 ["The clearest predicate for a conclusion that an indigent litigant will be entitled to appointed counsel as a matter of due process will be a determination that the litigant may lose his or her physical liberty if he or she loses the litigation."].)

Ouyang contends Judge Borenstein violated her privilege against self-incrimination, arguing that he asked whether she owned a phone in the course of resolving the dispute relating to Achem's questions concerning her rent payments. Her contention fails, however, as he never compelled her to answer that question.[15]

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[15] In a related contention, Ouyang asserts that Judge Borenstein violated the privilege by denying her motion to quash Achem's subpoena for the

Ouyang also maintains that Judge Borenstein was obliged to stay the judgment debtor examination while the contempt proceeding was pending, pointing to *Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686. There, federal officers, working as undercover agents, entered a bar, where they were attacked by bar employees. (*Id*. at p. 687.) The officers filed a civil action against the employees, who were also named as defendants in a criminal action based on the same conduct. (*Ibid*.) In the civil action, the employees asserted the privilege against self-incrimination during their depositions, and the trial court ordered the depositions stayed until the employees were no longer subject to potential criminal liability. (*Id*. at p. 688.) The appellate court affirmed the stay, concluding it was necessary to protect the employees' constitutional rights. (*Id*. at p. 690.) Here, in contrast, Judge Borenstein was not required to stay the judgment debtor examination, as the subject matters of the contempt proceeding and the judgment debtor examination were materially distinct, and Judge Borenstein barred Achem from questioning Ouyang regarding issues potentially relevant to the contempt proceeding. In sum, Judge Borenstein did not contravene Ouyang's privilege against self-incrimination or her right to counsel.

e. *No Judicial Bias*

Ouyang contends Judge Borenstein displayed bias requiring reversal of the turnover order. Although we lack jurisdiction to review Judge Borenstein's denial of Ouyang's disqualification request under section 170.3 (see p.I.A., *ante*), ""'a [party] may assert on appeal a claim of denial of the due process right to an impartial judge." [Citation.]' [Citation.] 'The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.' [Citation.]" (*Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 673.) As explained below, Ouyang has demonstrated no judicial bias.

Ouyang identifies four incidents that purportedly manifest bias. She argues that Judge Borenstein's ruling on her request for a waiver of the

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production of documents. As she offers no argument (with citation to appropriate legal authorities) to support that contention, she has forfeited it.

undertaking necessary to stay the examination "demonstrated a state of mind in favor of the rich." She further maintains that Judge Borenstein's turnover order, which permitted her to retain $500 in cash, left her with no resources for an appeal, and that his ruling that she produce the documents that Achem requested by subpoena within 48 hours of his denial of her motion to quash was "oppressive and harassing." Ouyang also asserts that Judge Borenstein improperly permitted sheriffs to be in the courtroom during the examination.

We have examined the record carefully and find no trace of judicial bias or misconduct. As explained above (see pt. II.B.1., *ante*), Judge Borenstein did not abuse his discretion in denying Ouyang's request for a waiver of the requisite undertaking. The turnover order manifests no perceptible bias against Ouyang's appeals, as Ouyang never suggested to Judge Borenstein that the order might impair her financial resources for an appeal. Although Ouyang objected when Judge Borenstein ordered her to produce the documents Achem requested within 48 hours, on appeal she offers no argument that his order was, in fact, unauthorized. Under section 1987.1, Judge Borenstein had broad authority to direct compliance with Achem's subpoena.[16] As Ouyang had long known that Achem requested the documents, the order mandating their prompt production was not improper. Finally, the presence of sheriffs in the courtroom suggests nothing more than a routine concern for safety. In sum, Ouyang has established no judicial bias.

DISPOSITION

To the extent Ouyang's appeals were not dismissed by APJ Boren's November 16, 2016 order, we dismiss her appeals, with the exception of her appeals from (1) Judge Borenstein's September 28, 2015 denial of a waiver of the undertaking necessary to stay enforcement of the expert witness fee award; (2) Judge Borenstein's October 7, 2015 turnover order; (3) Judge Harwin's March 11, 2016 denial of a stay pending Ouyang's appeal from the

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[16] Subdivision (a) of section 1987.1 provides that "[i]f a subpoena requires . . . the production of . . . documents . . . the court . . . may make an order quashing the subpoena entirely, modifying it, or *directing compliance with it upon those terms or conditions as the court shall declare*." (Italics added.)

February 10, 2016 denial of her motion to vacate the March 2015 forensic examination order; and (4) Judge Harwin's March 25, 2016 denial of her request for a statement of decision regarding his March 11, 2016 ruling. We affirm those orders, and all related interim orders, in their entirety. Achem is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

COLLINS, J.

DUNNING, J.*

*Retired Judge of the Orange Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.